IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1659 OF 1990

1. Smt. Rahibai Vithoba Pashankar,
2. Shri Ganpat Vithoba Pashankar,
3. Smt. Dhondabai Bajirao Padale,
4. Shri Ramdas Namdeo Pashankar,
5. Shri Arjun Namdeo Pashankar,
6. Shri Mahadu Vithoba Pashankar ... Petitioners

versus

1. Shri Pandurang Kundlik Gujar,
2. Shri Yeshwant Vithoba Padale,
3. Deleted. ... Respondents

...

Mr. S.G. Karandikar, for the Petitioners.

Mr. V.A. Thorat, Senior Advocate, with Mr. P.P. Kakade, for Respondents Nos. 1 and 2.

...

CORAM : A.M.KHANWILKAR,J.

28th July 2004

ORAL JUDGMENT :

1. This writ petition under Article 227of the Constitution of India takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Pune dated February 22, 1990 in Revision No.MRT/P/X/9/1982(TNC.B.328/1982. The land in question is agricultural land Survey No. 45 admeasuring 16 acres 6 gunthas situated at village Malalung, taluka Mulshi, district Pune. The said land was Ramoshi Inam land, which was Class III inam. That was abolished under the provisions of the Bombay Inferior and Village Watans Abolition Act, 1958 with effect from 1st May 1959. The holder of the land paid the requisite amount on 21st April 1962, on which date the land stood regranted to him. The predecessor of the Respondent, one Rama Arjun Ramoshi, who was the owner of the suit land, died in the year 1952. His son Shripati also died on 3rd October 1975, leaving behind Respondent No. 3 herein, the second wife, and his daughter Shantabai from the first wife. The predecessor of the Petitioners Vithoba Pashankar, who was the husband of Petitioner No. 1; father of Petitioner No. 2; and uncle of Petitioners Nos. 4 and 5 was in possession of the suit land as

protected tenant as is mentioned in the Mutation Entry No. 513 effected on 21st January 1959. His name appeared on the village record since 1949. The entries in the village records for the subsequent years from 1964-65 till 1966-67 indicate as ‘Khud’ in ‘Tenant’ column. However, on application to the Circle Officer, the said entry was corrected and the name of the Petitioners’ predecessor, Vithoba, came to be entered by order dated 25thJune 1967, which was also later on certified before the death of the predecessor of the Respondent, Shripati. The predecessor of the Petitioners, Vithoba, died in 1979. In the meantime, the predecessor of the Respondent, Shripati, husband of Respondent No. 3 Laxmibai, sold three acres out of the suit land to the predecessor of the Petitioners, Vithoba, and his brother Namdeo. The remaining land remained in the name of the landlord, which, the record would establish, was being cultivated by the predecessor of the Petitioners. It appears that proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act were commenced in the year 1967 and notice came to be issued to the Petitioners’ predecessor Vithoba on 25th

January 1974. The Respondent No. 3 herein as a counter-blast filed application on 15th July 1976 under section 70(b) of the Act for a negative declaration that the Petitioners are not tenants. The present writ petition arises from the orders passed on the said application. The said application was contested before the Tahsildar. The Tahsildar by his decision dated May 2, 1987, was pleased to dismiss the application. The Tahsildar has noted that the applicant, Respondent No. 3, except examining herself, did not adduce any other evidence, whereas the Petitioners not only adduced oral evidence, but also produced documentary evidence in the shape of mutation entries to support their stand that their predecessor has been recorded as protected tenant. Besides the mutation entry, statements recorded by the revenue officers, containing the statement of Shripati, predecessor of Respondent No. 3, were also relied upon, which concede the position that since 1959, the predecessor of Petitioners, Vithoba, has been cultivating the suit land as tenant and that he was accepting Khand from him. On analysing the evidence on record, the Tahsildar came to the conclusion that

the Respondent No. 3 applicant was not entitled for getting negative declaration against the Petitioners, as the Petitioners were tenants in the suit land through their predecessor, at least since 1950. The Tahsildar has also adverted to the admission of the Respondent No. 3 in her oral evidence that she was not aware of the transaction between her predecessor Shripati and the predecessor of the Petitioners. She has also admitted that during the lifetime of Shripati, he used to receive food grains from the Petitioners. In this view of the matter, the Tahsildar found that the evidence on record would clearly establish that the Petitioners were cultivating the suit land as tenants and that position is established by mutation entries and the revenue record, which have remained unchallenged by the predecessor of Respondent No. 3, Shripati, during his lifetime. The Tahsildar also went on to observe that the application filed by Respondent No. 3 was not competent, because the other heirs were not joined. Against this decision, the matter was carried in appeal by the Respondent No. 3. The appellate authority by decision dated September 10, 1982, confirmed the

view taken by the Tahsildar and proceeded to dismiss the appeal. The appellate authority in the first place found that the Respondent No. 3 had no locus standi to file the appeal. Laxmibai had filed the appeal, because, it has come on record that she had sold the suit land to the other parties, namely, P.K. Gujar and Y.V. Padale. It then went on to observe that the proceedings were in any case bad for non-joinder of necessary parties. It also held that the original application filed by the Respondent No. 3 was barred by limitation, inasmuch as application for negative declaration ought to have been made within six months from the date of cause of action. It found that in the present case, the cause of action had arisen much earlier, for which reason application was not competent. The appellate authority has then concluded that the Petitioners cannot be said to be unauthorised cultivators. It has adverted to the admission of the applicant, Respondent No. 3, including the effect of unchallenged mutation entries. Accordingly, the appeal came to be dismissed. Against the said decision, the purchasers of the suit lands from Smt. Laxmibai,

as well as Respondent No. 3, preferred revision application before the M.R.T. The Tribunal was pleased to allow the said revision application by the impugned judgment and order. The Tribunal proceeded to examine the matter with reference to the submissions canvassed before it that though the Petitioners were in occupation of the suit land, they cannot be said to be tenants, because no fresh agreement or lease was executed in favour of the Petitioners in respect of the suit land after the date of regrant. The Tribunal was impressed by this submission and held that since no fresh agreement of lease was executed in favour of the Petitioners after the date of regrant, they would not continue to be tenant in respect of the suit lands. The Tribunal in para 9 has clearly recorded that though the Petitioners were previous tenants in respect of the suit land, however, after the date of regrant, their tenure would be governed by the provisions of section 32O of the Act and the Petitioners having failed to send intimation within the specified period, were not entitled for any protection. The Tribunal then went on to observe that even if there was any lease created

between the parties, the same being without permission would be illegal and the occupation of the Petitioners would be unauthorised. The Tribunal then found that since the Petitioners preferred to purchase only three acres of land out of the suit land, totally admeasuring 16 acres, it clearly goes to show that the Petitioners never considered themselves as tenants in the suit land. In substance, the conclusion reached by the Tribunal is that after the date of regrant, the Petitioners though were lawfully cultivating the suit land as tenants, could not be termed as tenants in absence of fresh lease executed in their favour in respect of the suit land. The Tribunal also discarded the mutation entries which operated in favour of the Petitioners on the above reasoning. Insofar as the technical issues decided against the Respondent No. 3 about the maintainability of the proceedings, the Tribunal found that in the present proceedings under section 70(b) of the Act, the main question was whether the person has established his status as that of tenant in the suit land. On that reasoning, the issue of locus standi and non-joinder of necessary parties has

been answered by the Tribunal.

2. Insofar as the issue of limitation is concerned, the Tribunal found that since the Respondent No. 3 was challenging the capacity of the Petitioners as tenants, the question of proceedings being instituted after limitation does not arise. On the above reasoning, the Tribunal proceeded to decide the revision in favour of the Respondents by setting aside the orders passed by the two authorities below.

3. Mr. Karandikar, for the Petitioners, contends that the Tribunal has clearly exceeded its jurisdiction in answering the technical issues in favour of the Respondents. He submits that in any case, even on merits, the reasons, which have weighed with the Tribunal, cannot be sustained and are clearly contrary to the settled legal position. He submits that since the suit land was inam land and has been regranted after the tillers' day, the date of regrant would be the tillers' day being 21st April 1962. He submits that from the evidence on record, as has been found by the two fact finding authorities

below, the predecessors of the Petitioners were in occupation of the suit land as tenants at least since 1950, i.e., much prior to the tillers' day and that position is substantiated by the statement of Shripati Rama recorded by the Circle Officer before effecting the concerned mutation entries. In that view of the matter, the Petitioners will have to be held as tenants prior to the tillers' day and for which reason it was unnecessary for the Petitioners to send intimation within the meaning of section 32O of the Act. To buttress this contention, reliance is placed on the decision of our High Court reported in 2004 (3) Mh.L.J. 75 in the case of Pradeeprao @ Virgonda Shivgonda Patil v. Sidappa Girappa Hemgire since deceased through his heirs and LRs. Ginnappa Sidappa Hemgire and others. Reliance is also placed on the observations made by the Apex Court in para 6 of the case reported in A.I.R. 1976 S.C. 1910 in the case of Pandurang Dnyanoba Lad v. Dada Rama Methe and others. It has been found that section 32O applies only to tenancies created after the tillers' day, i.e., 1st April 1957. The argument, therefore, proceeds that in the present

case, in fact, the tenancy was created since 1950 and much earlier to 1st April 1957, for which reason the provisions of section 32O of the Act will have no application. Besides, contends Mr. Karandikar, that not only the documentary evidence would support the claim of the Petitioners, but even the Respondent No. 3 and her predecessor, Shripati Rama, conceded that the Petitioners were cultivating the suit land, whereas the only argument as was canvassed before the Tribunal on the assumption that after the date of regrant, the status of the Petitioners would undergo change and since no fresh lease has been executed in favour of the Petitioners, coupled with the fact of non-compliance of requirement of section 32O of the Act, the Petitioners would not deserve any protection; that contention is fallacious and cannot stand the test of judicial scrutiny, especially in the light of the two decisions referred to above.

4. On the other hand, Counsel for the Respondents, Mr. Thorat, contends that the reasoning adopted by the Tribunal, though cannot be supported in view of the two decisions pressed

into service on behalf of the Petitioners, even then, in the present case, the decision of the Tribunal would not require any interference. He submits that assuming that the decision of the Tribunal is to be set aside, even then, this was a fit case where the matter ought to be remanded for proper adjudication of the issue of tenancy by the appellate Court, which is the final fact finding Court. This submission is canvassed on the assumption that the appellate Court has not recorded a clear finding of fact regarding the factum of tenancy. In other words, it was strenuously argued on behalf of the Respondents that even though writ petition would succeed by setting aside the order of the Tribunal, the matter ought to be remanded to the appellate authority for re-examination of the issue as to whether the Petitioners were tenants in the suit land and for giving negative declaration in that behalf.

5. Having considered the rival submissions, I have no hesitation in taking the view that the Tribunal has committed manifest error of law in not only upsetting the views taken by the Courts

below on the technical aspect of maintainability of the appeal at the instance of Respondent No. 3, or, for that matter, the purchasers from Respondent No. 3, but also reversing the finding of facts concurrently found by the two authorities below. On analysing the evidence on record, the Tahsildar as well as the appellate authority had rightly found as of fact that the Petitioners were cultivating the suit land. Even the Tribunal has accepted this position. To that extent, the finding of fact recorded by all the three authorities below is consistent. The Tribunal has, however, departed from the concurrent view taken by the two authorities below that the Petitioners were lawfully cultivating the suit land as tenants. That has been done by the Tribunal on the reasoning that after the date of regrant, the status of the Petitioners as tenants has undergone change. This is the only reason which has weighed with the Tribunal to take a contrary view. That reasoning is directly contrary to the view taken by this Court in the case of Pradeeprao (supra) as well as the exposition of the Apex Court in Pandurang's case (supra). In Pradeeprao's case,

this Court, while adverting to earlier two decisions of our High Court in Shrawan Ganpat Fukate (unreported) as well as Kallawwa Shattu Patil and ors. v. Yellappa Parashram Patil reported in 1992 Mh.L.J. 34, has held that the lease, which subsists in favour of the occupant of the land would enure and the same would be deemed to have commenced from the date of regrant and the date of regrant should be read as the tillers' day instead of 1st day of April 1957. It is seen from the record that the predecessor of Respondent, Shripati Rama, in his statement has admitted before the Circle Officer that the predecessor of the Petitioners, Vithoba, was cultivating the suit land as tenant since 1950 and that he was accepting Khand from him. It is on that basis mutation entry came to be recorded mentioning that the Petitioners' predecessor was protected tenant in the suit land. That mutation entry has remained unchanged during the lifetime of Shripati Rama, who died on 3rd October 1975. That position would obviously bind the Respondent No. 3. Besides, the Respondent No. 3, in her oral evidence, has conceded that the Petitioners were cultivating the suit land and that during

the lifetime of Shripati Rama, the tenants used to give food grains to him as Khand. If it is so, the two authorities below had rightly found that the Petitioners' predecessor was the protected tenant. By applying the ratio in the decision of our High Court in Pradeeprao's case (supra), the lease in favour of the Petitioners' predecessor would be deemed to have commenced from the date of regrant and the date of regrant being the tillers' day, the provisions of section 32 read with section 32G would apply. In other words, the provisions of section 32O will have no application to the fact situation of the present case. This position is also reinforced by the observations of the Apex Court in the decision in Pandurang's case (supra). In para 6, the Apex Court has observed thus :

> " Section 32-O of the Tenancy Act applies only to tenancies created after the tillers' day. It provides that in respect of such tenancies, a tenant desirous of exercising the right of purchase must give an intimation to the landlord and the Tribunal within one year

from the commencement of his tenancy. As observed by us, the relationship of landlord and tenant between the appellants and respondents did not come to an end on the introduction of the Alienations Abolition Act nor indeed is there any legal justification for the theory that on the cesser of that relationship a new relationship of landlord and tenant came into existence between the parties so as to attract the application of Section 32-O. The object of the Alienations Abolition Act was ‘to abolish ... alienations of miscellaneous character prevailing in the merged territories’, that is to say, to abolish the Inam grants prevailing in those territories. The elimination of Inamdars as intermediaries, not the eviction of the tillers of the soil, was the object of that Act. By Section 4, what was abolished was all alienations, all rights legally subsisting in respect of alienations and all other incidents of such alienations. A tenancy created by

> an Inamdar is not a right in respect of the alienation nor an incident of the alienation. In simple words, all rights of the Inamdars stood determined on the introduction of the Alienations Abolition Act; the rights of tenants continued to exist and were expressly protected by Section 28 of the Alienations Abolition Act."

In other words, since the tenancy in the present case had commenced prior to the date of regrant and the same lease having deemed to have commenced from the date of regrant in favour of the Petitioners and the date of regrant being tillers' day, the Petitioners would be protected by the provisions of section 32 read with section 32G of the Act and section 32O will have no application for which reason non-compliance of requirement of section 32O of the Act will make no difference, as the said provision had no application. As mentioned earlier, the Tribunal essentially proceeded to decide the matter in favour of the Petitioners mainly on the reasoning that after the date of regrant, the status of the

Petitioners would undergo change and since no fresh tenancy was created, the provisions of section 32O of the Act would apply. That reasoning cannot be sustained in the light of the decisions referred to above. It necessarily follows that the entire decision of the Tribunal would fall to the ground if the said reasoning was to be discarded. Perhaps, to get over this position, Counsel for the Respondents had made an unsuccessful attempt in contending that, in any case, the matter deserves to be remanded to the appellate Court for recording a clear finding of fact on the issue as to whether the Petitioners were or were not tenants in the suit land. From the discussion as referred to above, it is more than clear that the Tahsildar, as well as the appellate authority, have both recorded clear finding that the Petitioners were tenants in the suit land and rejected the case of the Respondents for negative declaration. What has been glossed over by the Counsel for the Respondents is that the fact that the Petitioners were in occupation of the suit lands was never in dispute. The only argument that was pressed into service before the Tribunal on behalf of the

Respondents was that after the date of regrant, as there was no fresh lease granted in favour of the Petitioners, provisions of section 32O would apply. As that reasoning cannot be sustained, in view of the decisions already referred to above, it will be wholly unnecessary to relegate the parties before the appellate Court, because the factum of possession of the Petitioners of the suit land is not disputed at all, since 1950, which position is stated in the statement of the predecessor of Respondent No. 3, as well as in the mutation entry which has remained unchallenged.

6. All other reasons recorded by the Tribunal will be of no avail. It is possible to suggest from the reasoning of the Tribunal that it proceeds to take the view that the tenancy in favour of the Petitioners was created in the year 1959-60 for which reason provisions of section 32O will apply. However, that reasoning clearly overlooks the evidence on record, which was analysed by the Tahsildar as well as the appellate authority. It was not open to the Tribunal to reverse the finding of fact recorded

by the two authorities below that the Petitioners' predecessor was in possession of the suit land since 1950, which position is established from the evidence on record already adverted to above. In the circumstances, the decision of the Tribunal cannot be sustained on merits.

7. Even with regard to the view taken by the Tribunal relating to the technical aspects noted by the two authorities below, about the locus standi of the Respondent No. 3 to maintain the application, the Tribunal misdirected itself in observing that that was of no relevance. On the other hand, if Respondent No. 3 had no locus standi to maintain the application, obviously the proceedings could not have proceeded further and it was wholly unnecessary to adjudicate the matter on merits. Even with regard to the issue of limitation, the Tribunal has overturned the view taken by the authorities below by sweeping observations that the question of limitation will not arise, because the Respondent No. 3 applicant was challenging the capacity of the Petitioners as tenants. These observations

clearly overlook the fact that the Petitioners' predecessor has been accepted to be tenant by the predecessor of Respondent No. 3 since 1950 and even the Respondent NO. 3 in her evidence has conceded that her predecessor used to accept crop share from the tenants. If it is so, the authorities below had rightly observed that the application filed in the year 1976 was obviously barred by limitation, being filed much beyond six months from the date of cause of action. Viewed in this perspective, the decision of the Tribunal cannot be sustained on any count. Accordingly, the same will have to be set aside. This petition, therefore, succeeds. Rule is made absolute. No order as to costs.

8. Parties to act on the authenticated copy of this Judgment.

(A.M.KHANWILKAR,J.)